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15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 OAKLAND DIVISION

18 NATIVE VILLAGE OF KIVALINA and CITY
19 OF KIVALINA,

20 Plaintiffs,

21 vs.

22 EXXONMOBIL CORPORATION; *et al.*,
23 Defendants.

CASE NO. C 08-01138 SBA

**STIPULATION RE: SCHEDULING
AND FORMAT FOR MOTIONS TO
DISMISS**

[Proposed Order Lodged Separately]

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1 WHEREAS, on May 16, 2008, the Court entered an Order Re: Case Management
 2 Conference directing the Parties¹ to meet and confer telephonically concerning the “schedule and
 3 format of any motions under Fed. R. Civ. P. 12(b),” and to submit to the Court, by May 28, 2008,
 4 their proposals for the same, either in the form of a stipulation or administrative motion;

5 WHEREAS, the Parties agree that it is in the interest of the Parties and the Court to devise
 6 a schedule and format that consolidates the number and size of the Rule 12(b)-related briefs to the
 7 extent possible, without limiting the rights of any party;

8 WHEREAS, the Parties have met and conferred telephonically regarding the appropriate
 9 schedule and format for the briefing of Rule 12(b) motions in this action;

10 NOW THEREFORE, the Parties, through their undersigned counsel, hereby stipulate as
 11 follows:

12 Fed. R. Civ. P. 12(b)(1)/12(b)(6) Briefs

13 Utility Defendants²

14 1. The Utility Defendants will file a single consolidated brief under Fed. R. Civ. P.
 15 12(b)(1) and 12(b)(6), not to exceed 50 pages, addressing counts 1, 2 and 4 of Plaintiffs’
 16 Complaint. Plaintiffs will file a single consolidated opposition brief, not to exceed 50 pages. The
 17 Utility Defendants will file a single consolidated reply brief, not to exceed 30 pages (*i.e.*, no more
 18 than 60 percent of the pages allotted for the moving and opposition briefs, as contemplated by
 19 Local Rule 7-4(b)).

20
 21 ¹ For the purposes of this Stipulation, the term “Parties” refers to Plaintiffs and the
 22 following Defendants (which are hereafter referred to, collectively, as “Defendants”):
 23 ExxonMobil Corporation, BP America, Inc., BP North America, Inc., Chevron Corporation,
 24 Chevron U.S.A., Inc., ConocoPhillips Company, Shell Oil Company, The AES Corporation,
 25 American Electric Power Company, Inc., American Electric Power Service Corporation, DTE
 26 Energy Company, Duke Energy Corporation, Dynegy Holdings Inc., Edison International,
 27 MidAmerican Energy Holdings Company, Mirant Corporation, NRG Energy, Inc., Pinnacle West
 28 Capital Corporation, Reliant Energy, Inc., Southern Company, Xcel Energy Inc., and Peabody
 Energy Corporation.

² For the purposes of this Stipulation, the term “Utility Defendants” refers to the following
 Defendants: The AES Corporation, American Electric Power Company, Inc., American Electric
 Power Service Corporation, DTE Energy Company, Duke Energy Corporation, Dynegy Holdings
 Inc., Edison International, MidAmerican Energy Holdings Company, Mirant Corporation, NRG
 Energy, Inc., Pinnacle West Capital Corporation, Reliant Energy, Inc., Southern Company, and
 Xcel Energy Inc.

2. American Electric Power Company, Inc., Duke Energy Corporation, and Southern Company (the Utility Defendants named in count 3 of the Complaint) will file a single consolidated brief, not to exceed 25 pages, addressing count 3 of the Complaint. Plaintiffs will file a single opposition brief, not to exceed 25 pages. AEP, Duke and Southern will file a reply brief not to exceed 15 pages.

Oil Company Defendants³

3. The Oil Company Defendants will file a single consolidated brief under Fed. R. Civ. P. 12(b)(1) addressing counts 1 through 4 of the Complaint. The Oil Company Defendants also will file a single consolidated brief under Fed. R. Civ. P. 12(b)(6) addressing counts 1 through 4 of the Complaint. The total number of combined pages for these two briefs shall not exceed 75 pages. Plaintiffs' opposition brief to each such motion shall not exceed the length of the motion to which it responds. The Oil Company Defendants will file a single consolidated reply brief in support of each such motion, and each such reply shall not exceed 60% of the page length of the motion that it supports.

Peabody Energy Corp.

4. Peabody will file a single brief under Fed. R. Civ. P. 12(b)(1) and 12(b)(6), not to exceed 50 pages. Plaintiffs will file an opposition brief not to exceed 50 pages. Peabody will file a reply brief not to exceed 30 pages.

* * *

5. In the alternative to the briefing format outlined in paragraphs 1 through 4 above, Plaintiffs retain the option to consolidate some or all of their briefs into one or more briefs, the total length of which shall not exceed the combined page total allocated for the Defendants' opening briefs.

6. The opening briefs discussed in paragraphs 1 through 5 above will be filed and served electronically on Plaintiffs on or before June 30, 2008. Plaintiffs' opposition briefs will be

³ For the purposes of this Stipulation, the term "Oil Company Defendants" refers to the following Defendants: ExxonMobil Corporation, BP America, Inc., BP North America, Inc., Chevron Corporation, Chevron U.S.A., Inc., ConocoPhillips Company, and Shell Oil Company.

1 filed and served electronically on Defendants on or before September 18, 2008. Reply briefs will
2 be filed and served electronically on Plaintiffs on or before November 18, 2008.

3 Fed. R. Civ. P. 12(b)(2) Briefs

4 7. The Non-Resident Utility Defendants (*i.e.* all Utility Defendants except Edison
5 International) will file and serve electronically on Plaintiffs a single consolidated brief under Fed.
6 R. Civ. P. 12(b)(2), not to exceed 50 pages, on or before June 30, 2008.

7 8. The Oil Company Defendants, as defined in footnote 3 herein, will not file a brief
8 under Fed. R. Civ. P. 12(b)(2).

9 9. Peabody will file and serve electronically on Plaintiffs a brief under Fed. R. Civ. P.
10 12(b)(2), not to exceed 20 pages, on or before June 30, 2008.

11 10. The Parties will defer all further personal jurisdiction briefing and related matters,
12 including issues related to jurisdictional discovery, until after the Court has decided Defendants'
13 motions under Rules 12(b)(1) and 12(b)(6). In the event that further briefing on these issues is
14 necessary, or ordered by the Court, the Parties will negotiate a mutually convenient briefing
15 schedule at that time.

16 11. The Parties' agreement to defer opposition and reply briefing on the issue of
17 personal jurisdiction does not effect a waiver of that defense by the Non-Resident Utility
18 Defendants or Peabody.

19
20 Dated: May 28, 2008

Respectfully Submitted,

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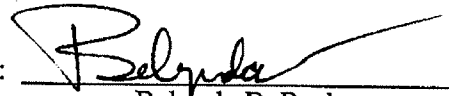
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15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 OAKLAND DIVISION

18 NATIVE VILLAGE OF KIVALINA and CITY
19 OF KIVALINA,

Plaintiffs,

20 vs.

21 EXXONMOBIL CORPORATION; *et al.*,

22 Defendants.

CASE NO. C 08-01138 SBA

**[PROPOSED] ORDER RE:
SCHEDULING AND FORMAT FOR
MOTIONS TO DISMISS**

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Pursuant to the Stipulation between Plaintiffs and Defendants ExxonMobil Corporation; BP America, Inc.; BP Products North America, Inc.; Chevron Corporation; Chevron USA, Inc.; ConocoPhillips Company; Shell Oil Company; The AES Corporation; American Electric Power Company, Inc.; American Electric Power Service Corporation; Duke Energy Corporation; DTE Energy Company; Edison International; MidAmerican Energy Holdings Company; Pinnacle West Capital Corporation; The Southern Company; Dynegy Holdings Inc., NRG Energy, Inc.; Reliant Energy, Inc.; Mirant Corporation; Peabody Energy Corporation; and Xcel Energy Inc. (“Defendants”) (collectively, the “Parties”), and FOR GOOD CAUSE SHOWN, IT IS HEREBY ORDERED:

The Parties shall abide by the briefing schedule and format set forth below:

Fed. R. Civ. P. 12(b)(1) / 12(b)(6) Briefs

Utility Defendants¹

1. The Utility Defendants will file a single consolidated brief under Fed. R. Civ. P. 12(b)(1) and 12(b)(6), not to exceed 50 pages, addressing counts 1, 2 and 4 of Plaintiffs’ Complaint. Plaintiffs will file a single consolidated opposition brief, not to exceed 50 pages. The Utility Defendants will file a single consolidated reply brief, not to exceed 30 pages (*i.e.*, no more than 60 percent of the pages allotted for the moving and opposition briefs, as contemplated by Local Rule 7-4(b)).

2. American Electric Power Company, Inc., Duke Energy Corporation, and Southern Company (the Utility Defendants named in count 3 of the Complaint) will file a single consolidated brief, not to exceed 25 pages, addressing count 3 of the Complaint. Plaintiffs will file a single opposition brief, not to exceed 25 pages. AEP, Duke and Southern will file a reply brief not to exceed 15 pages.

¹ For the purposes of this Order, the term “Utility Defendants” refers to the following Defendants: The AES Corporation, American Electric Power Company, Inc., American Electric Power Service Corporation, DTE Energy Company, Duke Energy Corporation, Dynegy Holdings Inc., Edison International, MidAmerican Energy Holdings Company, Mirant Corporation, NRG Energy, Inc., Pinnacle West Capital Corporation, Reliant Energy, Inc., Southern Company, and Xcel Energy Inc.

Oil Company Defendants²

3. The Oil Company Defendants will file a single consolidated brief under Fed. R. Civ. P. 12(b)(1) addressing counts 1 through 4 of the Complaint. The Oil Company Defendants also will file a single consolidated brief under Fed. R. Civ. P. 12(b)(6) addressing counts 1 through 4 of the Complaint. The total number of combined pages for these two briefs shall not exceed 75 pages. Plaintiffs' opposition brief to each such motion shall not exceed the length of the motion to which it responds. The Oil Company Defendants will file a single consolidated reply brief in support of each such motion, and each such reply shall not exceed 60% of the page length of the motion that it supports.

Peabody Energy Corp.

4. Peabody will file a single brief under Fed. R. Civ. P. 12(b)(1) and 12(b)(6), not to exceed 50 pages. Plaintiffs will file an opposition brief not to exceed 50 pages. Peabody will file a reply brief not to exceed 30 pages.

* * *

5. In the alternative to the briefing format outlined in paragraphs 1 through 4 above, Plaintiffs retain the option to consolidate some or all of their briefs into one or more briefs, the total length of which shall not exceed the combined page total allocated for the Defendants' opening briefs.

6. The opening briefs discussed in paragraphs 1 through 5 above will be filed and served electronically on Plaintiffs on or before June 30, 2008. Plaintiffs' opposition briefs will be filed and served electronically on Defendants on or before September 18, 2008. Reply briefs will be filed and served electronically on Plaintiffs on or before November 18, 2008.

Fed. R. Civ. P. 12(b)(2) Briefs

7. The Non-Resident Utility Defendants (*i.e.* all Utility Defendants except Edison International) will file and serve electronically on Plaintiffs a single consolidated brief under Fed.

² For the purposes of this Order, the term “Oil Company Defendants” refers to the following Defendants: ExxonMobil Corporation, BP America, Inc., BP North America, Inc., Chevron Corporation, Chevron U.S.A., Inc., ConocoPhillips Company, and Shell Oil Company.

1 R. Civ. P. 12(b)(2), not to exceed 50 pages, on or before June 30, 2008.

2 8. The Oil Company Defendants, as defined in footnote 2 herein, will not file a brief
3 under Fed. R. Civ. P. 12(b)(2).

4 9. Peabody will file and serve electronically on Plaintiffs a brief under Fed. R. Civ. P.
5 12(b)(2), not to exceed 20 pages, on or before June 30, 2008.

6 10. The Parties will defer all further personal jurisdiction briefing and related matters,
7 including issues related to jurisdictional discovery, until after the Court has decided Defendants'
8 motions under Rules 12(b)(1) and 12(b)(6). In the event that further briefing on these issues is
9 necessary, or ordered by the Court, the Parties will negotiate a mutually convenient briefing
10 schedule at that time.

11 11. Insofar as this Order defers opposition and reply briefing on the issue of personal
12 jurisdiction, it does not effect a waiver of that defense by the Non-Resident Utility Defendants or
13 Peabody.

14
15 DATED: May ___, 2008

16 By: _____
17 The Hon. Sandra B. Armstrong
18 United States District Judge
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